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File identification

Archive resolution of the previous information opened following complaints IP 93/2018, referring to the General Directorate of the Police of the Department of the Interior; and IP 94/2018, referring to the Catalan Health Institute.

Background

1. On 22/03/2018, the Catalan Data Protection Authority received a letter from a person (an agent of the Police Force) in which he filed a complaint against the General Directorate of the Police of the Department of the Interior (hereinafter, DGP) and the Catalan Institute of Health (hereinafter, ICS), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that a certain doctor from the Office of Medical Assistance and Occupational Risk Prevention of the DGP (hereinafter, GAM) would have accessed his clinical history managed by the public health service, in order to have that doctor also the condition of a doctor who provides services in a certain primary care center attached to the ICS. He added that, as a medical professional of the GAM, that doctor could not process temporary incapacity or leave due to common illness, but only professional. In the last one, the complainant stated that he asked the aforementioned doctor for a copy of his medical history, but that when it was given to him, some psychological reports were missing, which would have been destroyed when the psychologist who prepared them left to provide the services under which he had issued those reports. The complainant provided various documentation.

This complaint was assigned the numbers IP 93/2018 and IP 94/2018, referring to facts that affected two different data controllers (DGP and ICS).

2. The Authority opened a preliminary information phase, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.
3. In this information phase, on 06/20/2018 the DGP was required because report, among others, on whether the doctor who identified the reporting person provided his services in the GAM as internal or external staff; if he had processed the temporary incapacity or leave due to common (non-professional) illness to the reporting person. Also, in relation to the diligence of evidence issued by this doctor on 06/07/2017, in relation to the medical visit carried out on the person

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reporting on 01/06/2017, the DGP was required in order to inform what was the legal authorization that would legitimize the GAM to process sick leave due to common illnesses. Finally, the DGP was required to specify how the "personal records" were accessed of the reporting person, which are described in the report issued on 02/11/2017.

4. On 12/07/2018, the DGP responded to the aforementioned request through a letter in which it stated, among others, the following:
 - That the doctor mentioned, works as medical staff of the ICS in the police departments, by virtue of a management order signed on 28/07/2016, between the Department of the Interior and the ICS. This order and its extensions were published in the Official Journal of the Generalitat of Catalonia (hereafter, DOGC), by means of resolution INT/2500/2016, of October 27 (DOGC No. 7244 of 10/11/2016); resolution INT/1015/2017, of 10 May (DOGC No. 7370 of 16/05/2017); and resolution INT/498/2018, of March 13 (DOGC No. 7583 of 03/21/2018).
 - That on 01/06/2017, by virtue of the management assignment referred to above, the doctor mentioned generated a temporary incapacity (henceforth, IT) to the reporting person.
 - That the service provided by the aforementioned doctor through the GAM is strictly a service of the ICS, which supports the Directorate General of Human Resources General of the DGP.
 - That with regard to the diligence of 07/06/2018, this was issued at the request of the reporting person and that its sole purpose was to deliver it by hand to that person on the same day.
5. On 07/23/2018 and also within the framework of this preliminary information phase, the DGP was again required to report on whether the GAM staff was assigned to the Department of the Interior; whether the GAM staff provided occupational medicine services; on how the "personal history" of the reporting person was accessed, which are described in the report issued on 02/11/2017; as well as in order to point out the reasons why the psychological reports that would not have been given to the reporting person when he exercised the right of access, would have been destroyed.
6. Also on 07/23/2018, as part of this preliminary information phase, the ICS was required to report, among others, on whether the GAM is assigned to the Department of the Interior or the ICS; if the GAM staff also provide occupational medicine services; if this staff accesses the clinical history managed by the public health service; if the "personal history" of the reporting person, described in the report issued on 02/11/2017, coincided with those appearing in the medical history of the reporting person; as well as if in order to point out the reasons why the psychological reports that would not have been given to the person reporting when he exercised the right of access, would have been destroyed.

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7. On 09/21/2018, the ICS responded to the requirement mentioned in the preceding 6th a through a letter in which he stated, among others, the following:

- That in relation to the psychological reports discussed, the ICS does not pay attention psychological
- That the ICS professionals who provide service to the Department of the Interior by virtue of the management mandate (Resolution INT/2500/2016, of October 27) organically depend on the Territorial Administration of Barcelona (ICS) and functionally of the Department of the Interior.
- That the aforementioned doctor carries out health care activities in the service of specific needs in the fulfillment of the DGP's own functions, regarding the attention to the police professionals assigned to the DGP in the DGP's dependencies.
- That the healthcare professionals of the ICS aim to provide primary care services of the National Health System, with the following specific objectives to achieve:
 - Attention to the unique problems arising from the danger of police tasks.
 - The specific consideration of the circumstances inherent in the possession and use of the firearms
 - Knowledge of the singularities and idiosyncrasies of the police profession in front of the disease.
- Given the above, the aforementioned doctor does not perform occupational medicine duties in the DGP, by virtue of the aforementioned management assignment.
- That this professional, given his functions of primary care of the National Health System, accesses the primary care clinic system (ECAP) and the clinical histories of the patients he attends as part of his duties in relation to staff of the DGP.

8. On 30/10/2018, the DGP responded to the requirement mentioned in the preceding 5th a through a letter in which he stated, among others, the following:

- That the GAM is not a body attached to the Department of the Interior.
- That the report of 02/11/2017 was issued by the aforementioned doctor, acting as a doctor of the ICS, at the request of the person making the complaint and as part of a process for IT of this person. This report was given to the complainant so that he could present it to the Catalan Institute of Medical Assessments.
- That access to this person's medical history is based on the fact that the doctor, as an ICS doctor, has access to and can use the registration systems (E-CAP) and the shared medical history of Catalonia for clinical monitoring and the issuance of discharges and discharges.
- That the mentioned doctor is a family doctor of the ICS, whose specialty registered in the Official College of Doctors of Barcelona is that of occupational medicine.

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Consequently, the fact that he signed the report of 02/11/18 with the text "Occupational Medicine" does not imply that he issued this report because he was developing in relation to the person reporting occupational medicine services, but as a reference to his speciality.

9. On 09/10/2018 and still within the framework of this preliminary information phase, the ICS was again required to specify whether the "personal background" of the person reporting, which appears described in the report issued on 02/11/2017, matched those listed in his medical history. Likewise, and given what is contained in the report of 02/11/2017, the ICS was required to indicate whether the GAM staff provides occupational medicine services and, in the event of reiterating that the doctor mentioned does not perform functions of occupational medicine, it was required that the reasons why he issued the controversial report be set out. Lastly, with regard to the psychological reports that would not have been given to the complainant, the ICS was required to provide the doctor's testimony as to whether these documents were not provided because they were destroyed when the psychologist visiting the complainant stopped providing services.
10. On 07/11/2018, the ICS responded to the previous request through a letter in which set out, among others, the following:
- That the report of 02/11/2017 contains the personal antecedents of the complainant, as the doctor considered it appropriate to highlight them. The medical professionals of the GAM have been using the computerized clinical history since July 2012. Previously, the records associated with visits to this office were made in the clinical history on paper.
 - That the aforementioned doctor does not perform occupational medicine duties.
 - That the report of 02/11/2017, addressed to the Catalan Institute of Medical Assessments, had as its object the "justification of the prolongation of his work incapacity before the visit to that Institute to which the patient had to appear".
 - That the mention in the footer of the signature of the medical specialty of occupational medicine is an error in this document, even though that doctor has this specialty but does not exercise it in the GAM by virtue of management task of the Department of the Interior with the ICS.
 - That according to the aforementioned doctor, on 06/02/2018 the complainant informed that "We were unable to attach any notes regarding the therapeutic actions that you performed with the psychologist (...) between the months of June and July 2011, to be a professional outside the Assistance Office who, although he worked to complete our assistance work and we know that he made personal notes regarding the cases treated, his notes and comments never they were and are not within reach of our medical consultation".
11. Also on 11/16/2018, as part of this preliminary information phase, it was returned to require the ICS to report, among others, on whether the provision of services within the framework

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of the management assignment with the Department of the Interior, by ICS professionals, entail the disclosure of health data of police officers to the Department of the Interior; as well as if, in the specific case of the reporting person, any health data had been disclosed to the Department of the Interior.

12. On 17/12/2018, the ICS responded to the previous request through a letter in which it explained, in summary, that the Department of the Interior had not been provided with health data relating to the medicine of the work of the person making the complaint, neither by the ICS nor by the aforementioned doctor, who did not perform occupational medicine duties. The ICS added that it was not recorded that any data had been transferred to the Department of the Interior in this case.
13. Also on 01/15/2019, as part of this preliminary information phase, the ICS was again required to provide the aforementioned doctor's testimony on whether he had disclosed the person's health data reporting to the Department of the Interior.
14. On 01/21/2019, the ICS provided the testimony of the referred doctor, who asserted that "the claim of the reporting user as I stated to him that he had communicated data from his medical history to the Department of the Interior it is completely false".

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.
2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the facts denounced

2.1. About the GAM

The complainant, an officer of the Mossos d'Esquadra, stated that a certain doctor from the GAM provided occupational medicine services as a doctor for the DGP.

In this sense, as indicated in the resolution INT/2500/2016, of October 27, by which publicity is given to a management assignment between the Department of the Interior and the ICS, the latter entity lends the primary care services of the National System of Health, respect for attention to police professionals, and has as specific objectives to achieve the following (clause 4a):

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"Attention to the unique problems arising from the danger of police tasks.

The specific consideration of the circumstances inherent in the possession and use of firearms.

Knowledge of the singularities and idiosyncrasies of the police profession in the face of illness."

So things are, as a first premise it is concluded that the health personnel of the ICS performs the functions described in the police departments, which would explain why the documentation generated by these professionals includes the DGP's data in the heading. In fact, as stated by the ICS in a letter dated 09/21/2018, although the GAM staff is functionally dependent on the Department of the Interior for providing services in its dependencies, organically it depends on the ICS, being staff assigned to this entity.

2.2. About occupational medicine services

The complainant stated that a certain doctor from the GAM had worked as a company doctor for the DGP, which he considers prevented him from processing an IT leave. Faced with this demonstration, both the DGP and the ICS have reiterated in the course of the previous information that the aforementioned doctor did not provide the occupational medicine service at the DGP.

It is worth noting that, together with his complaint, the person making the complaint provided a medical report issued on 02/11/2017 by the aforementioned doctor, in which his name and surname appeared at the foot of his signature, and under "Medicine del Treball", a circumstance from which the reporting person reasonably inferred that this doctor provided said occupational medicine service.

However, the two reported entities agree in stating that, although that medical professional is specialized in occupational medicine, he did not provide said service to the DGP. The ICS adds in its letter of 07/11/2018, that the mention in the footer of the signature of the medical specialty of occupational medicine did not imply that he exercised such a specialty by virtue of the management assignment of the Department of the Interior with the ICS, as indicated in the previous 10th.

That being the case, it can be inferred that the inclusion of the words "occupational medicine" in the professional's signature does not allow inferring, by itself, that the said medical professional from the ICS provided occupational medicine services to the DGP .

2.3. About the transfer of data to the Department of the Interior

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In this respect, the complainant indicated that the aforementioned doctor had provided data relating to his health to the Department of the Interior, a fact that the same doctor had expressed to him.

In this regard, by means of a letter dated 17/12/2018, the ICS has denied that any health data relating to the complainant has been communicated to the Department of the Interior. In turn, as has been set out in the factual background, the doctor himself has also asserted that "the claim of the reporting user as I stated to him that he had communicated data from his medical history to the Department of the Interior is totally false".

Given the above, in the framework of the previous information, no element has been found that allows to infer, circumstantial evidence, that the transfer or communication of complaint data has been carried out, as there is no element that corroborates the person's statement complainant, which is not accompanied by any evidence.

Consequently, the principle of presumption of innocence is applicable here given that it has not been possible to prove the existence of evidence of infringement and therefore administrative responsibility cannot be demanded. This principle, which is included in article 53.2.b) of the LPAC, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise".

2.4. About the psychological reports

In the last one, the complainant claims that he requested access to his clinical history from the GAM, although when the right of access became effective there were some psychological reports missing which would have been destroyed when the psychologist who he worked them out he left, as the GAM medical professional would have instructed him.

For its part, the ICS has provided by means of a letter of 07/11/2018, at the request of this Authority, the testimony of the aforementioned doctor on these facts:

"We have not been able to attach any notes regarding the therapeutic actions that you carried out with the psychologist (...) between the months of June and July 2011, because it is a professional outside the Care Cabinet who, if well, he was working to complete our care work and we know that he made personal notes regarding the cases treated, his notes and comments were never and are not within the reach of our medical consultation".

The first thing to highlight is that, apart from the fact that the ICS does not provide the service of psychological care, these reports are not part of the minimum content of the clinical history in accordance with what is established in article 10 of Law 21/2000, of 29

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of December, on the rights of information concerning the patient's health and autonomy, and clinical documentation. Given the above, the retention periods established in article 12 of the said rule do not apply to this documentation either.

Leaving aside the fact that the request for that documentation, it seems, should be directed to the DGP as responsible for the treatment, the period that has passed since they were generated (in 2011) would justify that this documentation had been destroyed in virtue of the principle of limitation of the term of conservation contained in article 5.1.e) of the RGD, to consider that its conservation would no longer be necessary to achieve the purpose pursued. The precept indicated is in line with what was provided for in art. 4.5 of the LOPD, currently repealed by Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD).

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the previous information it has not been proven that there are rational indications that allow imputing any fact that could be constitutive of any of the violations provided for in the applicable legislation, it is necessary to agree on the archive of these actions. Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement; b) When the facts are not proven; c) When the proven facts do not manifestly constitute an administrative infraction".

resolution

Therefore, I resolve:

1. File the actions of prior information IP numbers 93/2018, referring to the General Directorate of the Police of the Department of the Interior; and IP 94/2018, referring to the Catalan Health Institute.
2. Notify this resolution to the DGP, the ICS and communicate it to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (www.apd.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. You can also file an appeal directly

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administrative litigation before the administrative litigation courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating of the administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director

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